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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Federal Communications Commission
Office of Secretary

In the Matter of

Amendment of Section 73.202(b)
Table of Allotments
FM Broadcast Stations
(Shiner, Texas)

DOCKET FILE COPY ORIGINAL
MM Docket No. 01-105
RM-10104

To: Office of the Secretary
Assistant Chief, Audio Division, Media Bureau

SUPPLEMENT TO APPLICATION FOR REVIEW

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August 11, 2005

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SUMMARY

I.

The decision of the Court of Appeals in Charles Crawford v. FCC decided August 5, 2005 (No. 04-131) fashioned a benchmark for "logical outgrowth" for FM rulemaking petitions establishing an arc from the location of the initiating petition tacking on double the co-channel protection of the FM class proposed in the petition and co-channel protections of two consecutive full Class C FM facilities, an arc extending 294 miles in all directions. On this date, five pending FM rulemaking petitions for communities falling within such an arc are being withdrawn.

Three other long-pending FM rulemaking petitions are valid, i.e., Shiner, Texas, 373 miles distant from the initiating petition for Quanah, Texas; Batesville, Texas, 367 miles distant from Quanah; and Tilden, Texas, 408 miles distant from Quanah. Texas is a big state. Quanah is located in North Texas, at the Panhandle. Shiner, Batesville and Tilden are located in South Texas, near the Gulf of Mexico. For the benefit of the reader in the local area, to extend the reach of "logical outgrowth" such distances from Washington, D.C. would be an arc extending from Boston, thru upstate New York, to Cleveland, thru Kentucky, to North Carolina and ending at Charleston South Carolina.

II.

The Joint Parties' Counterproposal is not valid. The Joint Parties seek credit on the basis that they would provide the first local outlet for self expression under Section 307(b) of

the Communications Act for three tiny communities located within the San Antonio and Austin, Texas, radio markets, ranked 32nd and 49th largest in the nation, respectively. In each instance, a long established major radio operator will continue to own and operate its megamillion dollar facility with even greater power and coverage throughout the market. It is irrational to believe that these major market stations will in fact become the "first local outlets" for these tiny communities within the meaning of the Act. As applied to this case, the Commission's Tuck policy under which such an irrational concept has been advanced is arbitrary, capricious and contrary to law.

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To: Office of the Secretary
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SUPPLEMENT TO APPLICATION FOR REVIEW

I.
Charles Crawford v. FCC

1. In the decision of the United States Court of Appeals for the District of Columbia Circuit, No. 04-1031, decided August 5, 2005, the court fashioned a benchmark for measuring "local outgrowth" for petitions filed in FM allotment rulemaking proceedings under the Administrative Procedure Act. The benchmark starts with the maximum co-channel spacing required for the class of allotment in the initial rulemaking petition, then adds the maximum co-channel spacing required for a full Class C facility, then doubles the distance by adding the maximum co-channel spacing required for a second full Class C facility, as well as the maximum co-channel spacing required for the subject petition. The result is an arc from the location of the initiating petition extending 194 miles in all directions.

2. Shiner, Texas, is located 373 miles from Quanah, Texas, well beyond this perimeter. Moreover, the petition for Shiner proposes only a Class A FM facility, the least powerful category. Texas is a big state. Quanah is located in North Texas at the Panhandle; Shiner is located in South Texas, near the Gulf of

Mexico. For the benefit of the reader from the local area, to extend the reach of "logical outgrowth" to any point 373 miles distant from an initiating petition for an FM allotment at Washington, D.C., the arc would cover much of eastern United States, from the vicinity of Boston, thence to Albany, New York, thence to Cleveland, thence to Lexington, Kentucky, thence to Charlotte, North Carolina, thence to Charleston, South Carolina.

3. The Shiner petition is valid.

II.

4. The Joint Parties counterproposal isn't.

A.

The Joint Parties' claim for 307(b) credit based on "population gain" from their "Southern Strategy" currently before the Commission is without merit

5. The Joint Parties seek credit for an overall gain in FM service to more than a million people. JP Counterproposal at 25, Engineering Statement at 10. There is no suggestion that any of these people reside in a "white area" without any reception service or a "gray" area with only a single reception service. In all likelihood, the vast majority of these people reside in the San Antonio and Austin radio markets ranked 32nd and 49th largest in the nation. There are approximately 46 radio stations in the San Antonio radio market (Exhibit 1) and approximately 45 radio stations in the Austin radio market (Exhibit 2), offering an enormous range of radio services with multiple stations providing the more popular services. News and other information programming can be heard 24-7 across the radio dial. If the million people receiving an incremental additional signal already

have such a multiplicity of signals, how relevant is this statistic except to show that major markets have a lot of people in them than do deserving rural communities seeking their first local station such as Shiner. It should be given no weight in consideration of the JP Counterproposal.

B.

As applied to "first local outlet" claims
under the Joint Parties' "Southern Strategy,"
reliance on the "Tuck" policy
is arbitrary and capricious
contrary to law

6. The Joint Parties want the Commission to believe that a Class C-1 allotment in the Austin, Texas market, the nation's 49th largest, worth megamillions of dollars, after all these years of ownership and operation by Joint Parties' Capstar TX Limited Partnership, will become (and is to be credited under Section 307(b) as) the local outlet for the tiny community of Lakeway, population 8,002, imbedded within the huge metro service area of a Class C-1 facility. JP Counterproposal at 4-9, 24-25,

7. The Joint Parties also want the Commission to believe that a Class C-2 allotment in the Austin, Texas market, worth megamillions of dollars, after all these years of ownership and operation by Joint Parties' Clear Channel Broadcast Licenses, Inc., will become (and is to be credited under Section 307(b) as) the local outlet for the tiny community of Lago Vista, Texas, population 4,507, imbedded in the major metro service area of a Class C-2 facility. JP Counterproposal at 10-15, 24-25.

8. And, the Joint Parties want the Commission to believe that a Class C-1 allotment in the San Antonio, Texas market, the

nation's 32nd largest, worth megamillions of dollars, after all these years of ownership and operation by Joint Parties' Rawhide Radio, L.L.C., will become (and is to be credited under Section 307(b) as) the local outlet for the tiny community of Converse, Texas, population 11,508, imbedded in the huge metro service area of a Class C-1 facility. JP Counterproposal at 18-23, 24-25.

9. How is it that parties can present such a scenario to the agency and, instead of being ushered out the door, they have come to expect that the FCC will accept it, hook, line and sinker? The answer lies in the agency's Tuck policy.

10. The Tuck policy reminds us of a protocol of the State Department. During the 1800's and early early 1900's when our nation was actively acquiring interests in islands and territories in competition with nations such as England and Spain, statutes and other documents would at times provide that a given island or territory was "appertaining" to the United States. E.g., 48 U.S.C. §1411 regarding Navassa Island in the Caribbean near Cuba shortly prior to the Spanish-American War. The State Department explains the meaning of "appertaining" in this way: "The use of the word 'appertain' is deft, since it carries no exact meaning and lends itself readily to circumstances and the wishes of those using it." Sovereignty Study of State Department, 1931-1932, at 145-146 (copy attached as Exhibit 3 for handy reference). So, too, here, with respect to the Commission's Tuck policy.

11. The Tuck policy is a menu of wildly subjective

criteria: (a) The extent to which the community residents work in the larger metropolitan area; (b) whether the smaller community has its own newspaper or other media that covers the community's local needs and interests; (c) whether community leaders and residents perceive the specified community as being an integral part of, or separate from the larger metropolitan area; (d) whether the specified community has its own local government and elected officials; (e) whether the smaller community has its own telephone book provided by the telephone company or zip code; (f) whether the community has its own commercial establishments, health facilities, and transportation systems; (g) the extent to which the specified community and the central city are part of the same advertising market; and (h) the extent to which the specified community relies on the larger metropolitan area for various municipal services such as police, fire protection, schools and libraries. Faye and Richard Tuck, 3 FCC Rcd 5374 (1988).

12. The kaleidoscope of combinations of facts and circumstances under these criteria is virtually endless. But there is more. All eight factors need not favor the applicant. If a majority of the factors favor the specified community and a minority are unfavorable, the specified community can be awarded the allotment. Id.; Parker and Port St. Joe, Florida, 11 FCC Rcd 1095, ¶¶9-11 (1996). So, there are kaleidoscopes of combinations of facts and circumstances both for and against the specified community.

13. But there is still more. Nowhere amongst this no-man's land of subjective facts and circumstances is there provision for the most crucial consideration of all, i.e., a determination of the reasonable likelihood that a broadcast station with a signal serving the central city or metropolitan area will in truth serve as a meaningful local outlet for a designated licensed community.

14. We don't know if the Morningside situation (in which tiny Morningside, Maryland [2000 U.S. Census population 1,925] is the home of the top ranked station in the Baltimore-Washington market) was a product of the Tuck policy. But the Morningside case is symptomatic of the need to consider the reasonable likelihood of a meaningful local outlet for the smaller community in a major market in the Tuck line of cases. For many years now, the Morningside example involving Infiniti's controversial and popular station has been a public fact of life in the Washington, D.C. area for the Commission and its staff to observe and alert them to this flaw in the Tuck allotment policy.

15. The records in allotment proceedings in which the nebulous, subjective Tuck policy is applied, ignoring the realities of the radio marketplace, permit the agency to come down for or against any allotment. The policy essentially boils down to what the agency wants the policy to mean. As such, it is better suited to the art of diplomacy than to compliance with the rigors of decisionmaking under Motor Vehicle Manufacturers Association v. State Farm Insurance Company, 463 U.S. 29 (1983) and the Administrative Procedure Act.

Study of "Tuck" rulings from 1995 to 2004

16. The Court of Appeals has held that it is incumbent on a federal agency to monitor the effectiveness of its rules and policies in relation to its regulatory responsibilities. Bechtel v. FCC, 10 F.3d 875 (D.C.Cir. 1993). In that regard, incorporated by reference is a "Study of Reported Decisions by the FCC Applying the Tuck Precedent to Determine Whether to Grant or Deny a 'First Local Service Status' in FM Allotment Rulemaking Proceedings" on file in MM Docket No. 00-148.

17. This study reflects that during the period from September 1995 to August 2004, at least 54 reported decisions applied the Tuck policy.¹ One reported decision, in 1999, denied first local service status to the community of Lolo, Montana (population 2,747) located in the urbanized area of Missoula, Montana. In all of the other 53 reported decisions studied, the Commission granted first local service status to the community for which such status was requested. The Tuck factors could be and in fact were applied to support the first local service status without fail, whether involving small proposed communities of license (such as Leupp, Arizona, population 857, and Gurley, Alabama, population 876), large proposed communities of license (such as Sunnyvale, California, population 131,760, and Hoover, Alabama, population 62,742), small urbanized areas

¹ An effort was made to find all such reported decisions although we cannot say that other reported decisions do not exist. We have excluded cases in which there is a reference to a Tuck submission, but the case was decided on other grounds

(such as the Hyannis, Massachusetts, and Clarksville, Kentucky, urbanized areas) or large urbanized areas (such as the Chicago, Dallas-Fort Worth and Atlanta urbanized areas).

18. Since 1995, a favorable Tuck result has been available to the party seeking first local service status virtually for the asking. Moreover, the sole case in which a first local service status was denied in 1999 is indistinguishable from the other cases in which the status was always granted. Compare, e.g., Report and Order of Media Bureau, released November 30, 1999, MM Docket No. 97-203, denying 307(b) first local service status, to Lolo, Montana, population 2,746, located 12 miles from the center city in the urbanized area, Missoula, Montana, population approximately 42,000, with Report and Order of Media Bureau, released February 9, 2004, MM Docket No. 02-79, granting 307(b) first local service status to Park City, Montana, population 870, 21 miles from the center city in the urbanized area, Billings, Montana, population 89,847.

19. There are decisions awarding a favorable Tuck status in which there is no analysis of the factors whatsoever. See, e.g., Report and Order of Media Bureau, released July 24, 2003, MB Docket 03-105 (Malta, New York) at ¶4 and n. 4; Report and Order of Media Bureau, released May 18, 2001, MM Docket 00-225 (White Oak, Texas at ¶1; Report and Order of Media Bureau, released September 5, 2003, MB Docket No. 03-419 (Tybee Island, Georgia) at ¶4. A variation on this practice is to number the 8 Tuck factors and then refer to numbers leading to the decision without

any analysis, e.g., Report and Order of Media Bureau, released June 23, 2003, MM Docket 01-175 (Fletcher, North Carolina) at ¶3 and n. 6. Sometimes there is an extended analysis, e.g. Report and Order of Media Bureau, released November 29, 1996, MM Docket No. 95-175 (Newcastle, Oklahoma) at ¶3. But, whether there is no analysis, a brief analysis or a more extended analysis, the result is always the same. With the single exception noted, the Tuck policy always favors a 307(b) first local service status for the subject community.

20. There is something wrong here. As indicated in ¶14, supra, the Morningside example is a warning sign to the Commission regarding the actual service orientation of stations in small communities having facilities reaching into the center city of an urbanized area. All Tuck cases involve this relationship since Tuck does not apply to situations located outside of any urbanized area. This recurring truth about the attraction of the center city applies to major markets included in the survey such as Phoenix, Oklahoma City, Dallas-Fort Worth, Columbus, Ohio, Des Moines, Austin, Texas, Atlanta, Houston, Minneapolis-St. Paul, Kansas City, Chicago, Charlotte, San Jose, Birmingham, Jacksonville, Indianapolis, Orlando, Salt Lake City, Portland, Seattle and Louisville. It applies to lesser markets such as Denton, Lubbock and Waco, Texas, Little Rock, Myrtle Beach, Spokane, Flagstaff, Binghamton, Corpus Christi, Flint MI, Panama City, Albany, Kingsport TN, Tuscaloosa, Goldsboro NC, Asheville NC, Athens GA, Huntsville and Columbia SC. It can even

apply to small markets as well, such as Hyannis MA, Clarksville TN-KY, Stuart FL, Longview TX, Billings MO, Prescott AZ and Cheyenne WY.

21. There are no metes or bounds to the policy. The door is wide open. Virtually all Tuck cases are won by the proponent. In many of those cases, probably most of them, there is the inherent Morningside seed and temptation to seek the overall market audience rather than in fact serving as a first local outlet. Considering the many major markets that are involved in the Tuck cases and taking into account the relative guarantee that submitting a Tuck showing will win the case, the chances are that the policy has spawned many more Morningsides across the countryside.

D.

To apply the "Tuck" policy on a contrived premise that an established major market station may be accorded a decisional "first local outlet" status for a tiny community in its existing market is devoid of rational thought

22. Virtually all of the 54 reported decisions that were studied involved an effort to establish a new station in -- or move an existing station into -- a community that is relatively small in relation to the urbanized area in which it is located. The proponents of the 307(b) first local station status are newcomers or existing stations seeking to establish a new or expanded broadcast service within the urbanized area.

23. None of the 54 reported decisions involves -- or stands as precedent for -- the use of Section 307(b) as sought here by the Joint Parties with regard to the San Antonio and Austin radio

markets, in which a long established dominant radio station in the market whose economic interests will demand continued programming service that has led to such dominance, seeks decisional 307(b) credit for proposing to become the first local radio service for one of hundreds of small communities within its market. Considering the total implausability of any such situated station ever really doing this, these efforts take the amorphous and undisciplined Tuck policy described in B above to a new, surreal level.

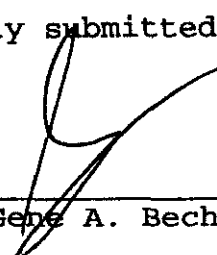
24. We are reminded of a line spoken by Jack Nicholson in the Academy Award winning movie, *Is This All There Is*, starring Helen Hunt as the female lead. Mr. Nicholson played the role of a successful author of novels about women who in his personal life, until ultimately brought to heel by Ms. Hunt, was given to sarcasm. A young female admirer upon meeting him and seeking an autograph asked, how can you be so perceptive about the way women think and feel? He responded, "I envision how men think and feel, and then remove all semblance of reason." So, too, here. The effort of the long established powerhouse radio stations in the the San Antonio and Austin markets, to claim first local service credit under Section 307(b) for tiny communities within their metro service areas take the already dubious Tuck policy and then remove all remaining semblance of reason.

III. Conclusion

25. For the foregoing reasons, the JP Counterproposal should be denied and the petition for the first local FM service

at Shiner, Texas, should be granted.

Respectfully submitted,



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August 11, 2005

EXHIBIT 1

radio-locator

formerly the MFL List of Radio Stations on the Internet

find US radio stations by location

city/zip San Antonio

state TX

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find by call letters

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There are 46 radio stations within close listening range of
San Antonio, Texas. (29° 27' 06" N, 98° 30' 46" W)





















② Didn't find your station? [Click here](#) to modify your search.

② Info: Click on this icon to get more information about a station or to submit a change.

⚡ Bitcaster: Indicates that the station broadcasts its audio on the Internet.


Distances to the stations are in miles.

Info	Call Sign	Frequency	Dist./Signal	City	School	Format
①	KPAC	88.3 FM	13.6 mi.	San Antonio, TX		Classical
⚡ ①	K204DX (KAWZ)	88.7 FM	12.0 mi.	San Antonio, TX		Religious
⚡ ①	KSTX	89.1 FM	13.6 mi.	San Antonio, TX		Public Radio
⚡ ①	KSYM	90.1 FM	0.9 mi.	San Antonio, TX	San Antonio College	College
⚡ ①	KYFS	90.9 FM	22.2 mi.	San Antonio, TX		Religious
⚡ ①	KZLV	91.3 FM	19.9 mi.	Lytle, TX		Christian Contemporary
⚡ ①	KRTU	91.7 FM	2.0 mi.	San Antonio, TX	Trinity University	Jazz
①	KROM	92.9 FM	19.3 mi.	San Antonio, TX		Spanish
①	KLEY	94.1 FM	18.5 mi.	Floresville, TX		Spanish
①	KCOR	95.1 FM	32.8 mi.	Comfort, TX		Spanish
①	KXXM	96.1 FM	14.4 mi.	San Antonio, TX		Hot AC
①	KAJA	97.3 FM	13.6 mi.	San Antonio, TX		Country
③	KNGT (CP) ②	97.7 FM	52.8 mi.	McQueeney, TX		Tejano
①	KBBT	98.5 FM	13.6 mi.	Schertz, TX		Urban Contemporary
⚡ ①	KISS	99.5 FM	19.3 mi.	San Antonio, TX		Rock
⚡ ①	KCY Y	100.3 FM	13.6 mi.	San Antonio, TX		Country
⚡ ①	KONO	101.1 FM	13.6 mi.	Helotes, TX		Oldies
①	KQXT	101.9 FM	2.9 mi.	San Antonio, TX		Adult Contemporary
①	KSRX	102.7 FM	2.9 mi.	San Antonio, TX		Rock
①	KEYI	103.5 FM	55.9 mi.	San Marcos, TX		Oldies
①	K279AB (KMFR)	103.7 FM	5.3 mi.	San Antonio, TX		Classic Rock
①	KRID	104.1 FM	52.7 mi.	Pearsall, TX		Country
①	KZEP	104.5 FM	2.8 mi.	San Antonio, TX		Classic Rock
⚡ ①	KSMG	105.3 FM	19.3 mi.	Seguin, TX		Hot AC
⚡ ①	KELZ	108.7 FM	18.5 mi.	Terrell Hills, TX		Top-40
①	KXTN	107.5 FM	19.3 mi.	San Antonio, TX		Tejano

① KTSA	550 AM	6.6 mi.		<u>San Antonio, TX</u>	News/Talk
① KLBJ	590 AM	75.9 mi.		<u>Austin, TX</u>	News/Talk
① KSLR	630 AM	10.6 mi.		<u>San Antonio, TX</u>	Religious
① KKYX	680 AM	19.5 mi.		<u>San Antonio, TX</u>	Country
① KSAH	720 AM	20.9 mi.		<u>Universal City, TX</u>	Spanish
① KTKR	760 AM	12.3 mi.		<u>San Antonio, TX</u>	Sports
① KSJL	810 AM	9.8 mi.		<u>Somerset, TX</u>	Urban Contemporary
① KONO	860 AM	5.7 mi.		<u>San Antonio, TX</u>	Oldies
① KLUP	930 AM	7.9 mi.		<u>Terrell Hills, TX</u>	Nostalgia
① KBIB	1000 AM	22.6 mi.		<u>Marion, TX</u>	Spanish
① KDRY	1100 AM	11.0 mi.		<u>Alamo Heights, TX</u>	Religious
① KRDY	1160 AM	11.9 mi.		<u>San Antonio, TX</u>	Children's
① WOAI	1200 AM	23.4 mi.		<u>San Antonio, TX</u>	News/Talk
① KZDC	1250 AM	5.1 mi.		<u>San Antonio, TX</u>	Spanish
① KXTN	1310 AM	10.6 mi.		<u>San Antonio, TX</u>	Tejano
① KCOR	1350 AM	8.1 mi.		<u>San Antonio, TX</u>	Spanish
① KFNI	1380 AM	31.2 mi.		<u>Pleasanton, TX</u>	Ethnic
① KGNB	1420 AM	25.0 mi.		<u>New Braunfels, TX</u>	Talk
① KCHL	1480 AM	6.5 mi.		<u>San Antonio, TX</u>	Gospel Music
① KEDA	1540 AM	11.7 mi.		<u>San Antonio, TX</u>	Spanish

 very weak signal  weak signal  moderate signal  strong signal  very strong signal

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- If you are having trouble locating stations, look [here](#) for tips.
- Look [here](#) to find stations by geographic coordinates.

1. Enter your city or zipcode: (United States only)

City or Zipcode: State (optional) :
 San Antonio TX

2. Choose which types of radio stations to find:

☐ AM Only ☐ FM Only ☒ AM and FM

- ☒ Licensed Stations  ☒ Low Power FM Stations 
☒ Construction Permits  ☒ FM Translators 
☒ Unlicensed Stations  ☒ FM Booster Stations 

Station Format: Any Format 

3. Choose a reception range:

☒ Local Stations Only

<http://www.radio-locator.com/cgi-bin/locate?select=city&city=San+Antonio&state=TX&sid=&x=0&y=0>

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EXHIBIT 2

radio-locator

formerly the MIT List of Radio Stations on the Internet

find US radio stations by location

city/zip Austin

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There are 45 radio stations within close listening range of Austin, Texas. (30° 18' 02" N, 97° 44' 50" W)

② Didn't find your station? [Click here](#) to modify your search.

② Info: Click on this icon to get more information about a station or to submit a change.

⚡ Bitcaster: Indicates that the station broadcasts its audio on the Internet.

Distances to the stations are in miles.

Info	Call Sign	Frequency	Dist./Signal	City	School	Format
②	KNLE	88.1 FM	11.5 mi.	<u>Round Rock, TX</u>		Christian Contemporary
②	KAZI	88.7 FM	5.0 mi.	<u>Austin, TX</u>		Urban Contemporary
⚡ ②	K206CE (KAWZ)	89.1 FM	9.9 mi.	<u>Austin, TX</u>		Religious
②	KMFA	89.5 FM	3.5 mi.	<u>Austin, TX</u>		Classical
⚡ ②	KUT	90.5 FM	7.2 mi.	<u>Austin, TX</u>	University of Texas	Public Radio
⚡ ②	KNCT	91.3 FM	48.0 mi.	<u>Killeen, TX</u>	Central Texas College	Variety
⚡ ②	KOOP	91.7 FM	5.0 mi.	<u>Hornsby, TX</u>		Variety
⚡ ②	KVRX	91.7 FM	5.0 mi.	<u>Austin, TX</u>	University of Texas	College
②	KQJZ	92.1 FM	18.9 mi.	<u>Hutto, TX</u>		Smooth Jazz
②	KKLB (CP) ②	92.5 FM	21.5 mi.	<u>Elgin, TX</u>		Tejano
②	KDHT	93.3 FM	32.8 mi.	<u>Cedar Park, TX</u>		Hip Hop
②	KLBJ	93.7 FM	2.8 mi.	<u>Austin, TX</u>		Rock
②	KAMX	94.7 FM	3.5 mi.	<u>Luling, TX</u>		Hot AC
②	KKMJ	95.5 FM	3.5 mi.	<u>Austin, TX</u>		Adult Contemporary
②	KHFI	96.7 FM	3.5 mi.	<u>Georgetown, TX</u>		Top-40
②	KVET	98.1 FM	3.5 mi.	<u>Austin, TX</u>		Country
②	KHHL	98.9 FM	32.8 mi.	<u>Leander, TX</u>		Spanish
②	K259A.J (KDHT)	99.7 FM	3.5 mi.	<u>Austin, TX</u>		Hip Hop
②	KASE	100.7 FM	3.5 mi.	<u>Austin, TX</u>		Country
②	KROX	101.5 FM	3.5 mi.	<u>Buda, TX</u>		Alternative
②	KPEZ	102.3 FM	7.2 mi.	<u>Austin, TX</u>		Classic Rock
②	KEYI	103.5 FM	19.4 mi.	<u>San Marcos, TX</u>		Oldies
②	KQBT	104.3 FM	24.6 mi.	<u>Taylor, TX</u>		Top-40
②	KXXS	104.9 FM	31.4 mi.	<u>Marble Falls, TX</u>		Spanish
②	KXXS (CP) ②	104.9 FM	17.4 mi.	<u>Dripping Springs, TX</u>		Spanish
②	KEMK	105.9 FM	3.5 mi.	<u>Round Rock, TX</u>		Rhythmic Oldies

① KGSR	107.1 FM	15.9 mi.	📶	Bestrop, TX	Adult Album Alternative
② KINV	107.7 FM	23.2 mi.	📶	Georgetown, TX	Tejano
③ KISA	550 AM	68.6 mi.	📶	San Antonio, TX	News/Talk
④ KLBJ	590 AM	8.3 mi.	📶	Austin, TX	News/Talk
⑤ KSLR	630 AM	72.5 mi.	📶	San Antonio, TX	Religious
⑥ KKYX	680 AM	85.4 mi.	📶	San Antonio, TX	Country
⑦ KSAH	720 AM	59.2 mi.	📶	Universal City, TX	Spanish
⑧ KIXL	970 AM	7.5 mi.	📶	Del Valle, TX	Religious
⑨ KBBW	1010 AM	98.3 mi.	📶	Waco-Marlin, TX	Religious
⑩ KFIT	1060 AM	6.0 mi.	📶	Lockhart, TX	Gospel Music
⑪ WOAI	1200 AM	59.8 mi.	📶	San Antonio, TX	News/Talk
⑫ KWNX	1260 AM	29.0 mi.	📶	Taylor, TX	Sports
⑬ KVEI	1300 AM	5.5 mi.	📶	Austin, TX	Sports
⑭ KJCE	1370 AM	5.9 mi.	📶	Rollingwood, TX	Talk
⑮ KELG	1440 AM	12.3 mi.	📶	Manor, TX	Spanish
⑯ KFON	1490 AM	4.0 mi.	📶	Austin, TX	Spanish
⑰ KZNX	1530 AM	16.8 mi.	📶	Creedmoor, TX	Sports
⑱ KTXZ	1560 AM	7.0 mi.	📶	West Lake Hills, TX	Spanish
⑲ KOKE	1600 AM	12.4 mi.	📶	Pflugerville, TX	Spanish

📶 very weak signal 📶 weak signal 📶 moderate signal 📶 strong signal 📶 very strong signal

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1. Enter your city or zipcode: (United States only) ⓘ

City or Zipcode: Austin State (optional): TX

2. Choose which types of radio stations to find:

☐ AM Only ☐ FM Only ☒ AM and FM

☒ Licensed Stations ⓘ ☒ Low Power FM Stations ⓘ
☒ Construction Permits ⓘ ☒ FM Translators ⓘ
☒ Unlicensed Stations ⓘ ☒ FM Booster Stations ⓘ

Station Format: Any Format

3. Choose a reception range: ⓘ

☒ Local Stations Only

<http://www.radio-locator.com/cgi-bin/locate?select=city&city=Austin&state=TX&sid=&x=0&y=0>

7/6/200

EXHIBIT 3

Sovereignty Study of State Department
1931-1932, pp. 145-146

"not within the lawful jurisdiction of any other government" shall be occupied by American citizens. The discoverer of guano was to make such assertion, under oath. This assertion was made as to the Swan Islands, and a certificate, based in part thereon, was issued. If the jurisdiction, or claim of jurisdiction, of another State had been advanced the certificate would have been refused. The Cayo Verde Case, cited above, is illustrative. The mere issuance of a certificate, based upon the represented state of facts, cannot modify or alter the true facts. It would seem to follow that the Swan Islands, dominion over which was in Honduras, were not of that class of islands contemplated in the Act.

The same section provides that islands so possessed may be considered at the discretion of the President "as appertaining to the United States". The use of the word "appertain" is deft, since it carries no exact meaning and lends itself readily to circumstance and the wishes of those using it. It has given rise to such words as "appurtenant" and "appurtenance". The common law denies that land can be appurtenant to land. In a strict sense an island cannot be appurtenant to other territorial possessions. If the word "appertain" and its variants cannot be given a strict meaning they lose what little value they have when relied upon for the creation or
assertion

assertion of legal rights. The meaning of the Act must be found outside the phrase quoted above.

Section 1418 authorizes the President "at his discretion, to employ the land and naval forces of the United States to protect the rights of the discoverer..." If, upon occupation under the Guano Act, the islands were to become a part of the domain of the United States such authorization would be unnecessary. Further, the President probably would not have received discretionary power.

Section 1419 provides that nothing in the Act "shall be construed as obliging the United States to retain possession of the islands" after the removal of guano. If the word "possession" was used in a strict sense it follows that a mere temporary occupation, for a fixed purpose, was contemplated. Of course, possession could be retained. But it is doubtful if the Act contemplated such occupation as would give rise to the right of sovereignty.

Section 1412 stipulates that a discoverer shall show, inter alia, that "possession was taken in the name of the United States...". This condition was included in the Attorney General's opinion of June 2, 1857. As shown above, several certificates recited that occupation was taken in the name of the United States; the Swan Islands certificate did not. But it is my opinion that

CERTIFICATE OF SERVICE

I certify that on this 11th day of August, 2005, I have caused copies of the foregoing pleading to be placed in the mails, first class, postage prepaid, addressed to the following:

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